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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO REPEAL
THE ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-13-0029

**Petitioner's Reply to Comments by
the CIDVC and State Bar re: Petition
to Repeal Arizona Rules of Protective
Order Procedure**

Mike Palmer, petitioner, replies to both the Committee on the Impact of Domestic Violence and the Courts (CIDVC) and the State Bar.

In general, both parties overlook the points in my petition and simply argue "We've always done it this way. (For the past five years, anyway.) Why change now?"

To which I reply, "Our country always had slavery. (A lot longer than five years.) Doesn't make it right." Keeping the status quo for the sake of keeping the status quo is silly. Thankfully, our country rethought our policy and abolished slavery. In the same way, I'm asking the Court to abolish the ARPOP.

CIDVC

The CIDVC responded with a token Comment, simply saying the Court created the ARPOP. As if that made it right and immortal.

To which I say, "What the Court giveth, the Court can taketh away."

The CIDVC did not deny any of the reasons in my petition for repealing the ARPOP. Therefore, in the spirit of Rule 8(d) of Civil Procedure, the Court should grant my petition.

The State Bar

Likewise, the Bar does not directly refute the points in my petition. Instead the Bar obfuscates, mischaracterizing my cite of *Marsin v. Udall*. The Bar says, "Nothing in *Marsin* supports an argument that the Rules of Protective Order Procedures are unconstitutional." That wasn't my point, per se.

I thought I was clear in my petition. The two takeaways from *Marsin* (which I had bolded in the block quote in my petition) are "[1] Neither this court nor the superior court can by rule of procedure deprive a party of the opportunity to exercise [a constitutional right]. [2] Courts cannot enact substantive law. A court is limited to passing rules which prescribe procedure for exercising the right. Any rule of court that operates to lessen or eliminate the right is of no legal force." And then I gave several examples of how the ARPOP deprives defendants of constitutional rights and how the ARPOP enacts substantive law.

While my personal experiences with civil injunctions are not relevant to any of this (hence, inadmissible), it is true that I have been aggrieved twice now by

two ex parte civil injunctions brought by the same vengeful woman who lives 120 miles away from me.¹ So what? Paraphrasing Ben Franklin, "Adversity is the Mother of Invention." Our Founders wouldn't have had anything to fight over if their rights hadn't been aggrieved. If the ARPOP weren't broke, I wouldn't ask you to fix it. But the ARPOP is broke.

CONCLUSION

The last step in problem solving is to "Evaluate Results." That is, after you've made a decision, the thoughtful person reflects back to see if they made the right decision. And if they didn't, they correct it.

Our legal libraries are full of case law where courts have done a 180, righting their wrong. There's no shame in that.

The first step in recovery is admitting there's a problem. For the reasons presented in my petition, the ARPOP should be repealed. We already have Rules of Criminal and Civil procedure which govern criminal matters, like Orders of Protection, and civil matters, like Injunctions against Harassment.²

¹ A long time friend who divorced her husband a few years ago. (My misfortune was to side with her husband.) While the Legislature had good intentions and meant for injunctions to be a shield, she, like many others I've observed since, has learned to use Injunction as a sword.

² While I think it a bad idea, if the CIDVC wants to offer judicial officers the text of the ARPOP as a Benchbook (with the disclaimer that it is not law or binding), that would not run afoul of the Constitution. (The publication being

Submitted this 1st day of July 2013.

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advisory in nature only.) However such a publication would only continue to promulgate the errors in the ARPOP.